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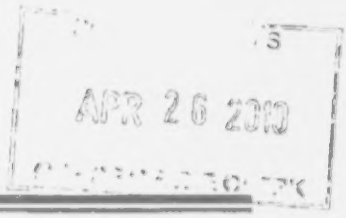

IN THE

Supreme Court of the United States

R.J. REYNOLDS TOBACCO COMPANY, ET AL.,
Petitioners,

v.

STATE OF MONTANA EX REL. STEVE BULLOCK,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Montana

BRIEF FOR THE RESPONDENT

JOHN A. KUTZMAN
PAOLI, LATINO & KUTZMAN, P.C.
257 West Front Street
Suite A
Missoula, Montana 59802
(406) 542-3330

STEVE BULLOCK
ATTORNEY GENERAL
CHRISTIAN D. TWEETEN
CHIEF CIVIL COUNSEL
Counsel of Record
OFFICE OF THE ATTORNEY GENERAL
STATE OF MONTANA
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
(406) 444-2026
(ctweeten@mt.gov)

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QUESTION PRESENTED

Whether the Montana Supreme Court violated the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, in interpreting – consistent with generally applicable principles of Montana contract law – the plain text of an arbitration provision as not reflecting the parties' intent to arbitrate a particular issue in a settlement agreement expressly governed by state law.

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STATEMENT OF THE CASE

1. In 1998, the Attorneys General of 46 States (including Montana), the District of Columbia, the Commonwealth of Puerto Rico, and four territories – known as the "Settling States" – entered into a Master Settlement Agreement ("MSA" or "Agreement") with four major tobacco companies, R.J. Reynolds, Philip Morris, Lorillard, and Brown & Williamson Tobacco Corp.[1] The MSA is a settlement agreement, resolving litigation brought by the Settling States seeking substantial damages from tobacco companies for, among other things, their pervasive and ongoing misrepresentations to consumers regarding the health effects of smoking.

In exchange for the Settling States' release of claims against the tobacco companies, *see* MSA § XII, the tobacco companies voluntarily agreed to certain marketing restrictions, *see id.* § III, and to make annual payments to the Settling States, *see id.* § IX. The purposes of the settlement were to achieve "significant funding for the advancement of public health," to implement "important tobacco-related public health measures," and to fund "a national Foundation dedicated to significantly reducing the use of Tobacco Products by Youth." *Id.* § I.

Under the MSA, annual payments based on each tobacco company's market share, *see, e.g.*, *id.* § IX(b), are made into escrow. *See id.* § IX(a). An Independent Auditor – required by the MSA to be a "major, nationally recognized, certified public accounting firm," *id.* § XI(b) – is charged with the tasks of, among

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[1] The terms of the MSA allow for other tobacco companies subsequently to join the Agreement, which numerous tobacco companies – including certain petitioners here – have done.

other things, "calculat[ing] and determin[ing] the amount of all payments owed . . . , the adjustments, reductions and offsets thereto," and "the allocation of such payments, adjustments, reductions, offsets, and carry-forwards among" the tobacco companies and the Settling States. *Id.* § XI(a). Furthermore, disputes "arising out of or relating to calculations performed by, or any determinations made by, the Independent Auditor" are to be "submitted to binding arbitration before a panel of three neutral arbiters." *Id.* § XI(c).

Pursuant to the negotiated terms of the MSA, *see id.* § XIII, a Montana state court entered a Consent Decree and Final Judgment terminating Montana's litigation against the tobacco companies. That state court maintains a substantial role in implementing, enforcing, and interpreting the Agreement. Under the MSA, for example, the Agreement is to be "governed by the laws of the relevant Settling State." *Id.* § XVIII(n). Consistent with that governing-law provision, state courts are vested with "exclusive jurisdiction" to "implement[] and enforc[e]" the MSA. *Id.* § VII(a). In addition, the Agreement expressly authorizes Settling States to seek "a declaration construing any" provision of the MSA from the relevant state court. *Id.* § VII(c).

2. This case arises out of Montana's effort to invoke the jurisdiction of the state court to seek a declaration regarding the meaning of a provision of the MSA. In 2006, the Independent Auditor was charged with calculating and determining the amount of payments owed by the tobacco companies based on their tobacco product sales in calendar year 2005, and with recalculating and re-determining, if appropriate, the amount of payments owed by the tobacco

companies based on their tobacco product sales in prior calendar years, including 2003. With respect to the payments based on sales in 2003, the tobacco companies invoked a so-called "Non-Participating Manufacturer Adjustment." MSA § XI(d) ("NPM Adjustment"). The NPM Adjustment reflects the recognition that the obligations imposed by the MSA could reduce the market share of tobacco companies that participate in the Agreement, giving non-participating manufacturers a competitive advantage. Under the NPM Adjustment, therefore, when the market share of tobacco companies participating in the MSA declines below a certain level and the MSA is determined to be a "significant factor" in that decline, the NPM Adjustment potentially reduces annual payments to the escrow. *Id.*

An individual Settling State's share of the tobacco companies' payment, however, cannot be subjected to an NPM Adjustment if the Settling State "continuously had a Qualifying Statute . . . in full force and effect during the entire calendar year immediately preceding the year in which the payment in question is due" and if that Settling State "diligently enforced" the Qualifying Statute. *Id.* § XI(d)(2). A Qualifying Statute is a "statute, regulation, law and/or rule . . . that effectively and fully neutralizes the cost disadvantages" of the tobacco companies that participate in the MSA "vis-à-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of [the MSA]." *Id.* § XI(d)(2)(E). The MSA does not define the phrase "diligently enforced."

Because the tobacco companies submitted evidence to the Independent Auditor that they had lost the requisite market share in 2003 and that the MSA had subsequently been determined to be a "signifi-

cant factor" in that loss, they maintained that the Independent Auditor should apply the 2003 NPM Adjustment. The Settling States responded that each State had enacted a Qualifying Statute and that, because there had been no determination that a State had not diligently enforced its Qualifying Statute in 2003 (or any other year), the Independent Auditor could not apply the 2003 NPM Adjustment. The tobacco companies argued for an opposite result: the Independent Auditor must apply the 2003 NPM Adjustment in the absence of any determination that any State had diligently enforced its Qualifying Statute in 2003.

The Independent Auditor – Pricewaterhouse-Coopers – did not apply the 2003 NPM Adjustment. The Independent Auditor said that it was "not qualified to make the legal determination as to whether any particular Settling State has 'diligently enforced' its Qualifying Statute."[2] The Independent Auditor therefore refused to receive evidence from any party regarding whether any State diligently enforced its Qualifying Statute in 2003. Until that issue was resolved by the parties or another trier of fact, the 2003 NPM Adjustment would not be applied.[3]

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[2] App., *infra*, 9a-10a (Independent Auditor's Notice of Preliminary Calculations for the Tobacco Litigation Master Settlement Agreement Subsection IX(c)(1) Account Payments Due April 15, 2006, at 5 (Mar. 7, 2006) ("Independent Auditor Notice")).

[3] *See id.* The Independent Auditor's March 7, 2006 letter was a preliminary calculation. Participating manufacturer R.J. Reynolds subsequently objected to the language in the Independent Auditor's letter about the MSA not assigning the diligent-enforcement determination to the Independent Auditor and the Independent Auditor lacking the qualifications and expertise to decide that issue. Reynolds said this misstated the tobacco

3. This case began in May 2006 as a motion for declaratory order filed by the State of Montana, invoking the jurisdiction of the Montana state court that entered the consent decree. Through that motion, Montana seeks a declaration that it has enacted a valid Qualifying Statute – *i.e.*, Montana Code Annotated §§ 16-11-401 – 16-11-404 – and that it diligently enforced that provision during calendar year 2003. In filing that motion, Montana invoked the jurisdiction of its state courts to enforce the MSA, *see* MSA § VII(a)(2) (state court "shall retain exclusive jurisdiction for the purposes of implementing and enforcing" the MSA), and to issue a declaratory order interpreting "any" provision of the MSA, *id.* § VII(c)(1).

The tobacco companies responded by filing a motion to compel arbitration, relying on the arbitration provision in § XI(c) of the MSA. Although the Independent Auditor had declined to resolve definitively the diligent-enforcement issue, the tobacco companies insisted that the issue fell within the scope of the arbitration clause because the dispute was related to a calculation performed or determination made by the Independent Auditor.

The state trial court granted the motion to compel arbitration. Without invoking the Federal Arbitration Act ("FAA") or any principle of federal law, the

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companies' position and was unnecessary to the Independent Auditor's determination.

The Independent Auditor then removed that language from its final calculation. However, the Independent Auditor has never subsequently disavowed the reservations in the March 7, 2006 letter and has never said that it thinks that it does have this responsibility under the MSA or that it does have the qualifications and expertise to determine the issue.

state court concluded that arbitration of the diligent-enforcement issue was appropriate based on the text of the arbitration provision, construed in light of Montana contract law. *See* Pet. App. 39a. Despite the Independent Auditor's statement that it lacked the expertise or responsibility to decide the diligent-enforcement issue, the court found it "reasonable" to assume that the Independent Auditor had "presumed that the Settling States are 'diligently enforcing' their Qualifying Statutes." *Id.* at 40a.

4. The Montana Supreme Court, by a four-to-one vote, reversed. Although recognizing that "[a]rbitration is a matter of contract," the Montana Supreme Court first canvassed this Court's federal arbitration precedent. Pet. App. 10a-11a; *see also id.* (acknowledging that "the law favors arbitration when a contract contains an arbitration clause"). Based on *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), the Montana Supreme Court explained that "the first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate *that dispute*." Pet. App. 11a. And, relying on this Court's decision in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995), the court went on to hold that, "[w]hen deciding whether the parties agreed to arbitrate a certain matter, courts generally should apply ordinary state-law principles that govern the formation of contracts." Pet. App. 11a. That principle, the court said, was in perfect accord with the MSA, which provides that the "'the laws of the relevant Settling State'" "'shall'" govern the Agreement. *Id.* (quoting MSA § XVIII(n)).

The Montana Supreme Court then proceeded to decide, "[u]nder Montana law," whether the arbitra-

tion provision encompassed the diligent-enforcement issue raised by the State's motion. *Id.* at 11a-12a. Reviewing the arbitration provision, the court first found it necessary to "identify the parties' 'dispute, controversy or claim.'" *Id.* at 12a (quoting MSA § XI(c)). On that score, the court held that the tobacco companies had framed the issue raised by the State's motion in "imprecise terms." *Id.* at 13a. The dispute is fundamentally not about whether to apply the NPM Adjustment, the court reasoned, because the State's motion seeks only to litigate the meaning of diligent enforcement and the Independent Auditor had "concluded that it was neither responsible nor qualified to determine diligent enforcement." *Id.* The court, moreover, noted that the motion did not seek "to challenge any calculation, determination, or course of action actually performed, made, or chosen by the Independent Auditor," but rather sought a "declaration that Montana had, in fact, diligently enforced [the Qualifying Statute] during 2003." *Id.* at 14a. The court therefore rejected the tobacco companies' efforts to "repackage" the dispute "as something it clearly is not." *Id.*

The Montana Supreme Court further concluded that the dispute is not one "'arising out of or relating to calculations performed by, or any determinations made by, the Independent Auditor.'" *Id.* (quoting MSA § XI(c)). The dispute does not relate to a calculation or determination, the court explained, because the Independent Auditor had, at most, *presumed* that Montana diligently enforced the Qualifying Statute. In ordinary usage, the court reasoned, a presumption is not a "calculation or determination" because those words denote some type of affirmative investigation. *Id.* at 14a-15a. The court also explained that the

dispute does not "arise out of or relate to" any calculation or determination performed or made by the Independent Auditor because Montana's motion "relates to an issue (diligent enforcement) that the Independent Auditor explicitly refused to determine." *Id.* at 15a.[4]

The Montana Supreme Court refused to depart from its reading of the plain text of the provision based on the policy concern that, without a single arbitration, "'chaos'" would ensue. *Id.* at 17a. The court reiterated that the text of the provision was "plain" and that under "Montana law" the court must give effect to the plain text, not to policy concerns. *Id.* at 17a-18a. The court also noted that uniformity concerns were "undercut" by the fact that the MSA made the law of each Settling State the governing law, *id.* at 18a, and because Montana courts would be competent to apply a uniform standard were such a standard ever developed, *see id.* at 19a.

Finally, the Montana Supreme Court acknowledged that other forums, applying the contract law of the relevant Settling State, had interpreted the MSA's arbitration provision differently. *See id.* Those decisions, however, were of limited value because the question before the court was the dispute as framed by Montana's motion and because interpreting the meaning of the words of the MSA's arbitration provision was a question of "Montana law." *Id.*

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[4] That analysis was not changed, the court held, by certain parenthetical language in the provision. *See* Pet. App. 16a. Applying the principle of state law that contracts should be interpreted as a whole, the court explained that reading that language to mean that any dispute remotely connected to the NPM Adjustment must be arbitrated would "nullify the limiting words 'calculations performed by, or any determinations made by,' the Independent Auditor." *Id.*

Justice Rice dissented. He believed "interpretational errors" led the majority improperly to conclude that the text of the arbitration provision excluded the dispute about diligent enforcement. *Id.* at 26a.

The tobacco companies filed a petition for rehearing, which the Montana Supreme Court denied. *See id.* at 28a-31a.

REASONS FOR DENYING THE WRIT

I. CERTIORARI IS NOT WARRANTED BECAUSE THE MONTANA SUPREME COURT DID NOT VIOLATE THE FAA

In the decision below, the Montana Supreme Court held that the MSA's arbitration provision did not reflect the parties' intent to arbitrate the issue of diligent enforcement raised by Montana's motion. This Court's review of that case-specific contractual interpretation is unwarranted. First, the question decided was one of state law, and any error likewise was one of state law. Beyond that, the Montana Supreme Court appropriately applied FAA precedent in resolving this question. Indeed, the absence of any substantial question as to whether the decision below "violates" the FAA deprives this Court of jurisdiction under 28 U.S.C. § 1257(a). Setting aside those fundamental defects in the petition, this Court should deny the tobacco companies' request for review because the Montana Supreme Court's interpretation of the arbitration provision is correct. Finally, the decisions of other jurisdictions do not establish the need for this Court's intervention here.

A. Whether the Parties to the MSA Agreed To Arbitrate Diligent Enforcement Is a Matter of State Law Not Appropriately Resolved by This Court

The legal issue raised by the petition – whether the parties to the MSA agreed to arbitrate diligent enforcement – is a narrow question of state-law contract interpretation. Applying generally applicable state contract law against a backdrop of general FAA principles (*see infra* Part I.B.2), the court below concluded that the parties had not agreed to arbitrate the diligent-enforcement issue – and only that issue. *See* Pet. App. 17a ("plain language of the arbitration provision" does not apply to diligent enforcement). The tobacco companies maintain that the court erred in so interpreting the arbitration provision, *see*, *e.g.*, Pet. 3 ("dispute over 'diligent enforcement' under the MSA clearly falls within the plain language of the MSA's broad arbitration provision"), and they seek this Court's review to correct that error. But this Court must deny the petition at the threshold: whether the parties agreed to arbitrate diligent enforcement is a matter of state contract, not federal arbitration, law, and this Court does not sit to review such decisions.

The FAA does establish certain federal rules governing arbitration agreements, but it does not require arbitration in every given case. The FAA's "basic purpose . . . is to overcome courts' refusals to enforce agreements to arbitrate," *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995), by placing arbitration agreements "upon the same footing as other contracts." H.R. Rep. No. 68-96, at 1 (1924); *see Mitsubishi Motors*, 473 U.S. at 626 (federal arbitration policy "is at bottom a policy guaranteeing the enforcement of private contractual arrange-

ments"). The FAA accordingly preempts the application of state statutes or common-law rules that would otherwise bar the enforcement of arbitration agreements as well as state laws that single out such agreements for suspect status. *See, e.g., Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996).[5] Furthermore, the FAA, this Court has said, embodies an extra-statutory presumption in favor of arbitrability when an arbitration agreement is ambiguous. *See, e.g., Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995).

Despite the FAA's displacement of state law in those certain respects, however, "the FAA does not require parties to arbitrate when they have not agreed to do so." *Volt Info. Sciences, Inc. v. Board of Trustees*, 489 U.S. 468, 478 (1989); *see EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) ("nothing in the [FAA] authorizes a court to compel arbitration of any issues . . . that are not already covered by the agreement"); *Atkinson v. Sinclair Ref. Co.*, 370 U.S. 238, 241 (1962). As far as the FAA is concerned, then, parties are free to agree to arbitrate some issues, all issues, or no issues at all. *See Mastrobuono*, 514 U.S. at 57 ("courts are bound to interpret contracts in accordance with expressed intentions of the parties – even if the effect of those intentions is to limit arbitration"); *Mitsubishi Motors*, 473 U.S. at 626 ("as with any other contract, the parties' intentions control").

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[5] Even this rule is limited: generally applicable state-law defenses that do not single out arbitration agreements may be applied "to invalidate arbitration agreements without contravening [the FAA]." *Casarotto*, 517 U.S at 687; *see id.* ("Courts may not . . invalidate arbitration agreements under state laws applicable only to arbitration provisions.").

The first question underlying the interpretation of any arbitration agreement, therefore, is whether the parties intended the particular dispute to be arbitrated. Resolution of that threshold issue of the parties' intent is a matter of state, not federal, law. As this Court has said, "[w]hen deciding whether the parties agreed to arbitrate a certain matter . . . courts generally . . . should apply ordinary state-law principles that govern the formation of contracts." *Kaplan*, 514 U.S. at 944. This principle is longstanding. *See, e.g., Mastrobuono*, 514 U.S. at 62-63 & n.9 (relying on Illinois and New York contract law in interpreting scope of arbitration provision); *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987) ("state law . . . is applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally"). It was recently reaffirmed by this Court. *See Arthur Andersen LLP v. Carlisle*, 129 S. Ct. 1896, 1901-02 (2009) (neither § 2 nor § 3 of the FAA "purports to alter background principles of state contract law regarding the scope of agreements"; "state law . . . is applicable to determine which contracts are binding under § 2 and enforceable under § 3") (internal quotation marks and alterations omitted).

Leading authorities confirm that the question of arbitrability is a matter of state contract law: "[s]ince arbitration agreements are contracts, their meaning must be determined by applying rules of state contract law." 1 Domke on Commercial Arbitration § 15:1 (updated Aug. 2009); *see Avedon Eng'g, Inc. v. Seatex*, 126 F.3d 1279, 1287 (10th Cir. 1997) ("We look to state law principles of contract formation to tell us whether an agreement to arbitrate has been reached."); *cf. Vaden v. Discover Bank*, 129 S.

Ct. 1262, 1271-72 (2009) (agreeing that questions such as "What issues does [an] agreement [to arbitrate] encompass?" are "principally contractual questions"). And, even were there doubt on this issue (and there is none), the MSA conclusively dispels any such doubt in this case by stating that "[t]his Agreement . . . shall be governed by the laws of the relevant Settling State." MSA § XVIII(n).

A straightforward application of those principles compels denial of the tobacco companies' certiorari petition. As this Court emphasized in *Volt*, "this Court does not sit to review" "interpretation of private contracts," which is "ordinarily a question of state law." 489 U.S. at 474. That practice reflects that, in our federalist system, "state courts are the ultimate expositors of state law." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975); *see also Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590, 626 (1875) ("The State courts are the appropriate tribunals, as this court has repeatedly held, for the decision of questions arising under their local law, whether statutory or otherwise."); *Schad v. Arizona*, 501 U.S. 624, 636 (1991) (it is a "fundamental principle that [this Court is] not free to substitute [its] own interpretations of state statutes for those of a State's courts"); *cf. Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 499-500 (1941); *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

Indeed, this case is on all fours with *Volt*. In that case, this Court held that the application of a California statute permitting a stay of arbitration pending resolution of related litigation was not "pre-empted by the [FAA] in a case where the parties ha[d] agreed that their arbitration agreement w[ould] be governed by the law of California." 489 U.S. at

470-71. On its way to making that principal holding, however, this Court refused to review a threshold interpretive issue decided by a state court – namely, that a choice-of-law clause "incorporated the California rules of arbitration [including a stay provision] into their arbitration agreement." *Id.* at 473. In so doing, this Court explained that the "interpretation of private contracts" – even arbitration agreements – "is ordinarily a question of state law, which [it] does not sit to review." *Id.* at 474-76. This Court subsequently has reaffirmed that core principle of *Volt*. *See Preston v. Ferrer*, 552 U.S. 346, 360 (2008) (noting that, in *Volt*, this Court "rel[ied] on the [California] Court of Appeal's interpretation" of the arbitration agreement); *Mastrobuono*, 514 U.S. at 60 n.4 (noting that, in *Volt*, this Court "did not interpret the contract *de novo*" but "instead . . . deferred to the California court's construction of its own State's law").[6]

Volt controls this case. The dispute here, as in *Volt*, is a garden-variety contract question of the parties' intent regarding arbitrability. In *Volt*, the issue was whether the parties intended to incorporate a

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[6] Although *Volt* has been narrowed in certain respects, *see, e.g.*, *Mastrobuono*, 514 U.S. at 58-59, those subsequent decisions are not relevant to the proposition relevant here – namely, that this Court does not sit to review state-court interpretations of arbitration agreements. In *Mastrobuono*, this Court did interpret an arbitration agreement, but that case arose in federal court and the Court stressed that that distinction was dispositive. *See id.* at 60 n.3. Furthermore, this Court applied state law in interpreting the arbitration agreement in *Mastrobuono*, confirming that the meaning of such agreements is a matter of state, not federal, law. *See id.* at 62-63 & n.9. Petitioners – although citing *Volt* in their petition – do not ask this Court to overrule *Volt*, and they therefore have waived any such request. *See* Sup. Ct. R. 14.1(a); *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992).

provision precluding arbitration pending resolution of related litigation. Here, the issue is whether the parties intended diligent enforcement to be arbitrated. Just as this Court declined to review a state court's interpretation of the arbitration agreement in *Volt*, it should do the same here. Indeed, the tobacco companies' arguments for this Court's review track precisely the arguments made by the *dissent* in *Volt*. *Compare* Pet. 17 ("If courts were free to thwart arbitration by giving arbitration provisions an artificially narrow interpretation under state law, the FAA would be entirely hortatory.") *with Volt*, 489 U.S. at 481-82 (Brennan, J., dissenting) ("in order to guard against arbitrary denials of federal claims, a state court's construction of a contract in such a way as to preclude enforcement of a federal right is not immune from review in this Court as to its adequacy") (internal quotation marks omitted); *and* Pet. 26 ("By refusing to enforce the MSA's arbitration provision according to its plain terms, the Montana Supreme Court deprived the parties of their federal arbitration rights.") *with Volt*, 489 U.S. at 484 (Brennan, J., dissenting) ("the right of the instant parties to have their arbitration agreement enforced pursuant to the FAA could readily be circumvented by a state-court construction of their contract").[7]

That this Court has said that the FAA creates a "substantive" body of federal law does not, as the

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[7] The tobacco companies incorrectly insinuate that this Court's observation that arbitration agreements are to be enforced "'in accordance with their terms,'" Pet. 16 (quoting *Volt*, 489 U.S. at 478); *see also* Pet. 4, reflects an intent to federalize the meaning of every word in an arbitration agreement. But *Volt*, *Kaplan*, *Perry*, and *Mastrobuono* establish unmistakably that ascertaining parties' intent with respect to arbitrability is a matter of state, not federal, law.

tobacco companies argue (at 16), render this Court's review of the Montana Supreme Court's decision appropriate. The language the tobacco companies cite reflects this Court's view that, because the FAA is substantive, and not purely procedural, it is enforceable in state and federal court. *See, e.g.*, *Perry*, 482 U.S. at 489 (FAA creates a "body of substantive law" that is "enforceable in both state and federal courts"). *But see Preston*, 552 U.S. at 363 (Thomas, J., dissenting) (reaffirming his oft-stated position that the FAA "does not apply to proceedings in state courts"). Similarly, language cited by the tobacco companies from *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983), reflects nothing more than the FAA's presumption in favor of arbitration is federal in nature and that, in that case, this federal character weighed against a "surrender of jurisdiction" through abstention. *Id.* at 25-26; *see also Arthur Andersen*, 129 S. Ct. at 1902 n.5 (language of *Moses H. Cone* cited here is little more than a "vague prescription"). That language does not mean that ascertaining the parties' intent regarding the scope of an arbitration clause is a question of federal, rather than state, law. *Volt*, *Kaplan*, *Perry*, and *Mastrobuono* conclusively foreclose that view.[8]

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[8] The tobacco companies suggest that the dissent in *Volt* "agree[d]" with the majority that the interpretation of an arbitration provision is a "question of federal law." Pet. 16 (internal quotation marks omitted). But the majority in *Volt* plainly declined to review the state court's interpretation of the arbitration agreement, *see* 489 U.S. at 474-76, as this Court has since confirmed, *see Mastrobuono*, 514 U.S. at 60 n.4. And the *Volt* dissent itself emphasized that the majority "decline[d] to review" the state court's construction of the agreement "apparently because it f[ound] no question of federal law involved." 489 U.S. at 481; *see id.* ("[c]ontrary to the Court's view, the state

B. The Montana Supreme Court Properly Applied the FAA and Correctly Interpreted the MSA's Arbitration Clause

This Court's review also is unwarranted because the Montana Supreme Court did not "[v]iolate[]" the FAA and it correctly interpreted the MSA's arbitration provision.

1. The Decision Below Did Not Violate the FAA

The centerpiece of the petition is the tobacco companies' claim that the decision below "[v]iolate[s]" or "squarely conflicts" with the FAA. Pet. 15; *see* Pet. i (question presented is "[w]hether the Montana Supreme Court violated" the FAA). But this argument both misconceives the obligations imposed by the FAA and misdescribes the opinion of the Montana Supreme Court.

Interpreting an arbitration agreement as not encompassing a particular issue does not "[v]iolate[]" the FAA. The FAA does not compel arbitration against the wishes of the contracting parties: because "[a]rbitration under the [FAA] is a matter of consent, not coercion," parties are free to agree to arbitrate any, all, or no issues. *Volt*, 489 U.S. at 479. Instead, the FAA precludes States from refusing to enforce arbitration agreements; it prohibits States from relegating arbitration agreements to a suspect status under state law; and it creates a presumption that ambiguities should be resolved in favor of arbitration. *See supra* Part I.A.

The decision below is fully consistent with these principles. Contrary to the tobacco companies' assertion (at 18) that "the Montana Supreme Court

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court's" contract interpretation "is reviewable for two independent reasons").

refused to apply the federal substantive law of arbitrability – or even to acknowledge its existence," the lead paragraph of the discussion section of the opinion cites no less than three decisions of this Court interpreting and applying the FAA. *See* Pet. App. 10a (citing *AT&T Techs., Inc. v. Communications Workers*, 475 U.S. 643 (1986), *Mitsubishi Motors*, and *Kaplan*).[9] After citing that FAA precedent, the Montana court explained that, "[w]hen deciding whether the parties agreed to arbitrate a certain matter, courts generally should apply ordinary state-law principles that govern the formation of contracts." *Id.* at 11a (citing *Kaplan*). The court then applied generally applicable state contract law to the arbitration provision, concluding that the parties to the MSA did not agree to arbitrate diligent enforcement. *See id.* at 11a-18a. The court accordingly did not refuse to recognize the "valid[ity], irrevocab[ility], and enforceab[ility]" of an arbitration agreement. 9 U.S.C. § 2. Nor did it apply a state law that singled out arbitration agreements for special scrutiny. It simply held that the arbitration agreement *did not apply* by its plain terms to the dispute before it. The FAA demands nothing more.

It is therefore not surprising that the tobacco companies do not point to a *single* part of the opinion that disavows any federal policy or law. Petitioners'

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[9] The tobacco companies accordingly are wrong in claiming that "the majority opinion below is written as if the FAA did not exist." Pet. 24. As explained, the Montana Supreme Court cited ample federal FAA precedent, even though its failure to do so would not have supported an inference that it failed to follow relevant federal law. *See Bell v. Cone*, 543 U.S. 447, 455 (2005) ("Federal courts are not free to presume that a state court did not comply with constitutional dictates on the basis of nothing more than a lack of citation.")

argument instead reduces to the claim that the Montana court misinterpreted the text of the arbitration provision. *See* Pet. 18-26. But any such error would be one of state law – which "this Court does not sit to review," *Volt*, 489 U.S. at 474 – and it does not "[v]iolate[]" the FAA to find that parties did not intend to arbitrate a dispute. The FAA does not guarantee the arbitration of any particular issue, "it does not require parties to arbitrate when they have not agreed to do so . . . [,] nor does it prevent parties who do not agree to arbitrate from excluding certain claims from the scope of their arbitration agreement." *Id.* at 478; *see Mitsubishi Motors*, 473 U.S. at 628; *Mastrobuono*, 514 U.S. at 57; *Waffle House*, 534 U.S. at 293-94.[10]

The closest the tobacco companies come to suggesting *how* the decision below violated the FAA is in contending that the Montana court disregarded the rule that "doubts" should be "resolve[d] . . . in favor of arbitration." Pet. 15 (emphasis omitted); *see* Pet. 24 ("Nor could or did the majority explain how its interpretation of the MSA's arbitration provision comported with the *federal* presumption in favor of arbitration."). But, here again, the tobacco companies point to no language in the opinion disclaiming or

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[10] For these reasons, the Montana Supreme Court did not, contrary to the tobacco companies' assertion, "apply 'Montana law' to *override* the plain terms of an arbitration agreement," Pet. 24 (emphasis added); *see* Pet. 26 (the court "refused to enforce the MSA's arbitration provision according to its plain terms"). Rather, the court below applied Montana law to *interpret* the plain terms of an arbitration agreement. The tobacco companies' disagreement with that construction of the arbitration provision does not establish a "[v]iolat[ion]" of the FAA. Again, any such error would be one of state, not federal, law. *See supra* Part I.A.

countermanding this interpretive principle. And with good reason. The presumption in favor of arbitration applies when an arbitration agreement is "ambigu[ous]." *Volt*, 489 U.S. at 476 ("due regard" should be given to policy favoring arbitration by "resolv[ing]" "ambiguities" in favor of arbitration); *Waffle House*, 534 U.S. at 289 (notwithstanding federal policy favoring arbitration, "[a]bsent some ambiguity in the agreement . . . it is the language of the contract that defines the scope of disputes subject to arbitration").

The Montana Supreme Court acknowledged this presumption. *See, e.g.*, Pet. App. 9a. But the court concluded that the MSA's arbitration provision was "clear." *Id.* at 15a; *see id.* at 16a-17a ("read as a whole, it is clear that the parties intended to arbitrate only those disputes which involve calculations performed or determinations made by the Independent Auditor"); *id.* at 17a-18a (rejecting policy arguments as basis for disregarding "plain language of the arbitration provision"). Based on that threshold textual determination, the presumption in favor arbitration was inapplicable. *See Waffle House*, 534 U.S. at 294 ("Because the FAA is at bottom a policy guaranteeing the enforcement of private contractual arrangements, we look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement. While ambiguities in the language of the agreement should be resolved in favor of arbitration, we do not override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated.") (internal quotation marks and citations omitted); *see also Connecticut Nat'l Bank v. Germain*,

503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.").[11]

In all events, nothing in the text of the opinion supports the tobacco companies' accusation that the Montana Supreme Court flouted the presumption in favor of arbitration. And, absent "affirmative indication to the contrary," this Court must presume that the Montana court "followed" relevant FAA precedent. *Moses H. Cone*, 543 U.S. at 455; *see Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (citing "presumption that state courts know and follow the law").

In short, this is not a case in which a state court has held that a state law overrides an obligation imposed by the FAA. *See, e.g., Preston*, 552 U.S. at 349 (FAA preempts state law giving primary jurisdiction to agency to decide issues that parties agreed to arbitrate). Nor is it a case in which a state court has applied an arbitration-specific rule to defeat an otherwise applicable arbitration agreement. *See, e.g., Allied-Bruce Terminix*, 513 U.S. at 269-70 (FAA preempts application of statute barring enforcement of pre-dispute arbitration agreements); *Casarotto*, 517 U.S. at 683 (FAA preempts state statute singling out arbitration agreements for special notice requirements). Instead, this is a case where a state court – citing and applying relevant federal precedent as well as generally applicable state contract law – held

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[11] The conclusion that the MSA's arbitration provision is unambiguous is the correct interpretation of the agreement's text (notwithstanding the decisions of other jurisdictions), as discussed below. *See infra* Part I.B.2. But any error by the Montana Supreme Court in deciding whether the provision was unambiguous would be one of state contract, not federal arbitration, law. *See supra* Part I.A.

that an arbitration agreement unambiguously did not encompass the dispute before it. The tobacco companies cite *no* authority suggesting a violation of the FAA in such circumstances.

Indeed, given the presumption that state courts know and apply federal law, the Montana Supreme Court's citation to relevant federal authority, and the tobacco companies' conspicuous failure to identify *any* part of the decision below disavowing any federal arbitration rule, the petition presents no substantial federal question over which this Court has jurisdiction. *See* 28 U.S.C. § 1257(a); Eugene Gressman *et al.*, *Supreme Court Practice* § 3.16, at 181 (9th ed. 2007) (collecting authority for proposition that federal question raised must be substantial and not frivolous to support an exercise of jurisdiction under 28 U.S.C. § 1257(a)). The tobacco companies' complaint that the Montana court erred in reading the text of the arbitration provision as unambiguously not applying to diligent enforcement raises a question of state law outside this Court's jurisdiction.

2. The Montana Supreme Court Correctly Interpreted the Arbitration Provision

Even if this Court had jurisdiction to review the Montana Supreme Court's interpretation of this particular contract, this Court should deny the petition because the Montana court correctly held that the parties to the MSA did not agree to arbitrate diligent enforcement.

The decision below properly begins – and ends – its analysis with the text of the arbitration provision. The arbitration provision provides, in relevant part, that "[a]ny dispute . . . arising out of or relating to calculations performed by, or any determinations made by, the Independent Auditor (including, with-

out limitation, any dispute concerning the operation or application of any of the adjustments, reductions, offsets, carry-forwards and allocations described in subsection IX(j) or subsection XI(j)) shall be arbitrated." MSA § XI(c). As the Montana court correctly observed, the text focuses on the nature of the "dispute" and on whether that dispute concerns a "determination made" or "calculation performed" by the Independent Auditor. *See* Pet. App. 13a-16a.

In ascertaining the nature of the dispute underlying this litigation, the Montana court properly concluded that the tobacco companies had "frame[d]" the dispute in "imprecise terms." *Id.* at 13a. The court explained – and the tobacco companies do not contest here – that "[t]he State filed the instant action not to challenge any calculation, determination, or course of action actually performed, made, or chosen by the Independent Auditor." *Id.* at 14a. Instead, "the State sought a declaration that Montana had, in fact, diligently enforced" its Qualifying Statute in calendar year 2003. *Id.* The Montana court therefore properly rejected the tobacco companies' characterization of this litigation as a dispute over "the Independent Auditor's decision to presume diligent enforcement rather than presume no diligent enforcement." *Id.* at 13a.

Furthermore, and again interpreting the plain text of the arbitration provision, the Montana court concluded that "[t]he Independent Auditor neither 'calculated' nor 'determined' whether Montana diligently enforced a Qualifying Statute." *Id.* at 14a. That was so, the court reasoned, because the Independent Auditor *declined* to decide the issue of diligent enforcement, finding the issue beyond its responsibilities under the MSA and its ken. *See id.* at 13a. The to-

bacco companies do not dispute that reasoning here. Nor could they, as that description of the Independent Auditor's actions is correct. *See* App., *infra*, 9a-10a (Independent Auditor Notice at 5) (explaining that it had no responsibility to make a diligent enforcement "determination" and that it was not qualified to make such a "determination"). And, because "the Independent Auditor explicitly refused to determine" the issue of diligent enforcement, the court was right to conclude that the State's motion did not "arise[] out of or relate[] to" any payment determination made by the Auditor. Pet. App. 15a (internal quotation marks omitted). The tobacco companies' contrary arguments before this Court simply elide these crucial aspects of the decision below.[12]

The Montana court's reading of the arbitration provision also properly construes the MSA as a whole. As explained above, the MSA assigns state courts a substantial role in implementing, enforcing, and interpreting the Agreement. *See supra* p. 2. In particular, the Montana court has "exclusive jurisdiction" to "implement[] and enforc[e]" the Agreement, MSA § VII(a), and is expressly authorized to issue "a

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[12] Petitioners' criticisms of the decision fail to accord any deference to the contract interpretation of Montana's highest court. Even the dissent in *Volt* would have employed a "narrow" standard of review in interpreting the arbitration agreement, 489 U.S. at 484 n.6, yet the petition here proceeds as if *no* deference is due. Indeed, the petition goes so far as to suggest that "summary reversal is warranted." Pet. 32. That request has no merit. Because the ultimate issue in this case is whether the text of an arbitration agreement evidences an intent that diligent enforcement be arbitrated, summary reversal would squarely conflict with *Volt*, *Kaplan*, *Perry*, and *Mastrobuono*; it would countermand the presumption that state courts know and follow the law; and it would mock the principle that state courts are the ultimate arbiters of state law.

declaration construing any" provision of the MSA, *id.* § VII(c). This case began with the State seeking to invoke the jurisdiction of a state court to issue a declaration construing a provision of the MSA, which the State is expressly permitted to do under the Agreement. Indeed, state-court jurisdiction makes sense here given that the issue is a state-law question of what amounts to "diligent" enforcement of a statute, which will vary from State to State. The tobacco companies' expansive view of the arbitration provision therefore conflicts with the contract as a whole. *Accord* Pet. App. 16a (noting Montana contract-law principle that "the whole of a contract is to be taken together") (internal quotation marks and alterations omitted).

C. The Decisions of Other Jurisdictions Provide No Basis for This Court's Review

The tobacco companies incorrectly assert that a so-called "lopsided conflict between the Montana Supreme Court and the courts of every other jurisdiction" to have decided the "precise issue" presented here warrants this Court's review. Pet. 3.

First, the decision below poses no conflict of federal law with the decisions of other jurisdictions. The issue here is whether, under Montana law, *see* MSA § XVIII(n), Pet. App. 17a, the State's motion raises an issue that must be arbitrated under the MSA. The other decisions cited by the tobacco companies similarly were based ultimately on the contract laws of each State, as well as the specific issues raised in the litigation filings by each State. *See, e.g.*, *Alabama v. Lorillard Tobacco Co.*, 1 So. 3d 1, 7 (Ala. 2008) ("It is well established that the interpretation of an arbitration agreement within the scope of the Federal Arbitration Act is governed by general state-law

principles of contract interpretation.") (internal quotation marks and alterations omitted); *Ohio v. Philip Morris, Inc.*, No. 06AP-1012, 2008 OHIO APP LEXIS 3262, at *26 (Ohio Ct. App. July 24, 2008) ("Pursuant to the MSA's plain language, we apply Ohio law to our resolution of this appeal."). Because each court was applying a different body of *state* law to the issue as presented in litigation filings by each State, there can be no genuine "conflict" on this question, much less a conflict of *federal* law. *See, e.g.*, Gressman, *Supreme Court Practice* § 4.9, at 259 (to be relevant to certiorari, conflict among state high courts must "concern[] a federal question").

Second, the tobacco companies' suggestion that these decisions represent a uniform and "unbroken line of authority" that contradicts the Montana Supreme Court is unfounded. Pet. 23. By our tally, 31 of the referenced decisions make *no* or only quick reference to federal arbitration law; in some cases, that reference simply is to illustrate the consistency of state and federal law (Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, and Washington). Three cases decided the issue procedurally and/or the issue was abandoned on appeal (Kentucky, Maine, and West Virginia). And 13 cases discuss federal-law arbitration principles in addition to state-law contract principles (Alabama, Arizona, Georgia, Kansas, Louisiana, Maryland, Missouri, Nebraska, Nevada, North Dakota, Oklahoma, Puerto Rico, South Dakota, and Wisconsin). The one thing

that *is* uniform about the decisions (with the exception of Puerto Rico), therefore, is the recognition that the issue of whether the parties agreed to arbitrate diligent enforcement is ultimately a matter of *state* contract, not federal arbitration, law.

II. WHETHER THE MONTANA SUPREME COURT CORRECTLY INTERPRETED THE MSA'S ARBITRATION PROVISION PRESENTS NO ISSUE WORTHY OF THIS COURT'S REVIEW

Setting aside the foregoing substantial grounds for rejecting the petition, this Court's review is unwarranted because the case-specific question of contract interpretation presented is narrow and unlikely to recur; this case offers no vehicle to redress the tobacco companies' exaggerated claims regarding the alleged "death" of arbitration in Montana; and the tobacco companies' stated concerns with uniformity under the MSA are misplaced.

A. The Issue Presented Is Exceptionally Narrow and Will Not Recur

This Court's intervention is unwarranted because the question presented is limited and case-specific. The ultimate issue is whether the parties to the MSA agreed to arbitrate the issue of diligent enforcement raised by Montana's motion. That question, consistent with this Court's well-settled precedent in *Volt*, *Kaplan*, *Perry*, and *Mastrobuono*, would be resolved under Montana law. *See supra* Part I.A. And the procedural posture of this case – a motion for declaratory ruling invoking the jurisdiction of a state court to interpret and enforce an agreement governed by state law – is highly unusual. For those reasons, any merits decision by this Court favorable to the tobacco companies would be exceptionally narrow and case-specific. The Court would hold at most that, as

a matter of Montana law, the parties to the MSA agreed to arbitrate diligent enforcement. *See*, *e.g.*, Pet. 3 ("a dispute over 'diligent enforcement' under the MSA clearly falls within the plain language of the MSA's broad arbitration provision"). Such a decision would provide no occasion to fashion broad rules under the FAA. In fact, because this case fundamentally is one of contract interpretation, a decision in favor of the tobacco companies would have *no* application beyond the circumstances of this case. *Cf. Mastrobuono*, 514 U.S. at 72 (Thomas, J., dissenting) ("the majority's interpretation of the contract represents only the understanding of a single federal court regarding the requirements imposed by state law" and, "[a]s such, the majority's opinion has applicability only to this specific contract and to no other").

Furthermore, even the narrow issue of the arbitrability of diligent enforcement is virtually certain not to recur. By the tobacco companies' admission, the courts of the 47 other affected jurisdictions *already* have decided the issue. *See* Pet. 3; *see also* Pet. 18-23. Accordingly, not only is this Court's review unnecessary because the decision below is simply an "outlier" – as the tobacco companies put it (at 3), but there also is no chance that any error in the Montana court's interpretation of the MSA will influence future courts. Indeed, because the arbitrability of diligent enforcement now has been decided by all relevant jurisdictions, this issue likely will *never* be addressed by any court again. In these unique circumstances, the petition cannot possibly satisfy this Court's traditional standards for certiorari. *See* Gressman, *Supreme Court Practice* § 4.4(a), at 245 ("recurring nature of the issue in conflict often plays a decisive role in the grant or denial of certiorari").

B. The Alleged Hostility of the Montana Supreme Court to Arbitration Is No Basis for This Court's Review

In an effort to divert attention from the fact that the issue presented is narrow and unlikely to recur, the tobacco companies invite this Court's review to remedy "[t]he Montana Supreme Court's ongoing war against arbitration." Pet. 29 (internal quotation marks omitted). That hyperbole is quite wide of the mark.

First, the tobacco companies' narrative of hostility by the Montana Supreme Court to federal arbitration law has no basis in fact. Since *Casarotto*, the Montana Supreme Court has applied and enforced the FAA and this Court's arbitration precedent. *See, e.g.*, *Martz v. Beneficial Montana, Inc.*, 135 P.3d 790, 794 (Mont. 2006) (applying FAA and this Court's decisions in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), *Southland Corp. v. Keating*, 465 U.S. 1 (1984), and *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006), to uphold a motion to compel arbitration). Petitioners thus speak with false and prematurely expressed overstatement in contending that "'arbitration is dead in Montana.'" Pet. 32 (quoting Scott J. Burnham, *The War Against Arbitration in Montana*, 66 Mont. L. Rev. 139, 177 (2005)). Indeed, petitioners' exaggerated claim is based on a law review article discussing a 2002 decision – *Kloss v. Edward D. Jones & Co.*, 54 P.3d 1 (Mont. 2002) – that this Court declined to review, *see* 538 U.S. 956 (2003). *Kloss*, moreover, involved whether a state-law rule that waivers of constitutional rights must be knowing and voluntary could be applied as a generally applicable defense to defeat application of an arbitration agreement. *See* 54 P.3d

at 146-47. This case has nothing to do with that question and therefore could not possibly be a vehicle to redress *Kloss*'s effect (if any) on arbitration in Montana. That point serves only to underscore that the narrow issue raised here means that this case could not possibly be a vehicle for this Court to fashion any rules of federal arbitration law broader than the specific contract and facts presented.

Second, a decision to grant or deny certiorari should turn not on past decisions (*see* Pet. 29-31 & n.2) – which have *nothing* to do with the question presented here – but on whether the decision below satisfies this Court's criteria for certiorari. Whatever might be said about past decisions from more than a decade ago, the decision below exhibits no animus to federal arbitration policy. In its opinion, the Montana Supreme Court states that its decision is "based on Montana law and the plain language of the arbitration provision," Pet. App. 17a; *see id.* at 19a-20a, and it cites and applies federal arbitration precedent, *see id.* at 10a-11a. Nothing in the opinion exhibits any hostility toward federal arbitration law. In light of the plain text of the opinion and this Court's presumption that "state court[s]" are "competent to apply federal law," *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 701 (2006); *see Visciotti*, 537 U.S. at 24, the tobacco companies' efforts to impugn the motives and integrity of four Justices of the Montana Supreme Court based on a small number of law review articles should be rejected out of hand.

C. The Tobacco Companies' Claim That the Decision Below Frustrates the Implementation of the MSA Is Misplaced

In a final gambit to secure this Court's review, the tobacco companies argue that allowing the Montana Supreme Court's interpretation of the arbitration provision to stand could "balkanize[]" the MSA, resulting in "chaos" and disuniformity. Pet. 28. This argument may be quickly rejected.

First, the tobacco companies' balkanization fear is now largely moot. "Courts in 47 of the 48 affected jurisdictions" have already decided that diligent enforcement is arbitrable. Pet. 3; *see id.* (Montana "is the lone outlier"). And the tobacco companies cannot possibly suggest that there will be any crippling disuniformity in the MSA by having a Montana court decide the issue of diligent enforcement of *Montana's* Qualifying Statute, especially because "Montana's allocable share" of the annual payments is a mere "0.4247591%." Pet. App. 4a. Furthermore, Montana courts have yet even to opine on whether Montana diligently enforced its Qualifying Statute. Whether Montana courts will decide that issue in a manner at all inconsistent with the arbitration panel considering other States' cases is accordingly pure speculation. In all events, as the Montana Supreme Court recognized, nothing would preclude a Montana court from applying any uniform diligent-enforcement standards announced in an arbitration proceeding. *See id.* at 19a.[13]

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[13] It also bears noting that this Court's review of the Montana Supreme Court's decision could not possibly prevent state courts from differing on the question of arbitrability of other issues under the MSA's arbitration provision in the future.

Second, the text and structure of the MSA flatly contradict the tobacco companies' assertion that state-by-state interpretation of the MSA is inconsistent with the parties' intentions. The tobacco companies knew full well the risk of disparate interpretations of the MSA in agreeing to a governing-law provision making the laws of each Settling State determinative. *See* MSA § VII(f); Pet. App. 18a-19a. Beyond that, as explained previously, the MSA gives state courts exclusive jurisdiction to implement, enforce, and interpret the MSA. *See* MSA § VII(a)(2); Pet. App. 8a. Indeed, in view of the governing-law provision, even the MSA arbitration panel will need to make state-by-state determinations of what constitutes "diligent" enforcement under the particular State's law. Petitioners' plea for uniform treatment, therefore, is inconsistent with the very contract they seek to arbitrate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN A. KUTZMAN
PAOLI, LATINO &
KUTZMAN, P.C.
257 West Front Street
Suite A
Missoula, Montana 59802
(406) 542-3330

STEVE BULLOCK
ATTORNEY GENERAL
CHRISTIAN D. TWEETEN
CHIEF CIVIL COUNSEL
Counsel of Record
OFFICE OF THE ATTORNEY
GENERAL
STATE OF MONTANA
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
(406) 444-2026
(ctweeten@mt.gov)

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